IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 591 OF 2004

Shri Tanaji Babanrao Ranwade ... Appellants

V/s

Shri Premratan Gupta & ors. ... Respondents

Mr. V.K. Chawdhary for the appellant.

Mr. S.M.Gorwadkar with Nitin Mhatre for the Resp.No.1.

CORAM: P.V. KAKADE, J.

DATED: 15TH JUNE, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Pune in Civil Appeal No. 338 of 2002 dated 18th Dec., 2003 and setting aside the judgment and order passed by the Civil Judge, Jr.Divn., Pune and dismissing appellant-plaintiff's suit.

2. The plaintiff filed the suit for declaration and cancellation of sale deed and for possession of the suit property. The property bearing Survey No.2/3A admeasuring 8 Ares and Survey No. 2/3B admeasuring 30

Ares, are the properties located in village Aundh, Tal. Haveli, Dist. Pune. Those are ancestral properties of plaintiff and defendant Nos. 1 to 6. It was alleged that, previously properties were received by plaintiff's father Baban Bhimaji Ranwade as coparcener. He died on 15.2.1970. After his death, the suit properties were entered into the name of plaintiff and defendants 1 to 6 as legal representatives of the deceased Baban. According to the plaintiff, he had 1/7 share in the undivided share in the suit properties and no partitions were effected between the parties and, therefore, the claim for partition of undivided 1/7 share is filed. It is the case of the plaintiff that he is Government servant and residing separately since prior to his marriage. His father, without any legal necessity, sold the properties of Survey No.2/3B admeasuiring 30 Ares to defendants 7 and 8 in the year 1965. It is alleged that, father of the plaintiff was addicted to liquor and sold the properties in order to fulfil his bad voices. It is also alleged that plaintiff has not given consent to sale his share to defendants 7 and 8 and, therefore, sale deed dated 6.1.1965 is illegal and void. Plaintiff further alleged that, defendants 1 to 5, behind the back of the plaintiff, have sold Survey No. 2/3A to defendant No.7 on 3.12.1969. It was further alleged

that the defendants 1 to 5 had no right to transfer the plaintiff's share without his consent and, therefore, the sale deed regarding property Survey No. 2/3A dated 3.12.1969 is also illegal and void and, as such, the suit came to be filed to seek declaration to that effect.

3. The defendants challenged the suit on the ground that the earlier sale deed of 1965 for legal necessity of the family was executed by father of the plaintiff. Similarly, according to the defendants, the sale deed of 1969 was legal and proper. It is also contended that the suit is barred by law of limitation and sought to be dismissed.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had not proved that the property of Survey No.2/3A was not sold for legal necessity and, as such, that issue was held against him. It was further held that the sale deed of the year 1969 was not proved to be illegal and void. However, it was held that the plaintiff was entitled to his share in the property Survey No. 2/3B and, as such, the decree to that effect was passed.

5. The appeal was carried to the District Court. The learned appellate Court heard both sides and on available evidence on record came to the conclusion that the appeal deserves to be allowed and suit deserves to be dismissed on various grounds. Hence the appeal was dismissed and hence the present appeal is filed.

6. I have heard the learned counsel for both parties. Perused the record.

It may be noted at this stage that the only substantial question of law involved in this appeal is, whether the suit is barred by law of limitation. Now, it must be noted that the Trial Court came to the conclusion that the suit claim so far as the land of Survey No.2/3A was concerned, regarding which a sale deed dated 3.12.1969 was executed, the claim was clearly barred by law of limitation, because the receipt Exh.81 executed by the plaintiff by receiving consideration was evidently executed by him in the year 1970 and, as such, the suit could not be entertained to the extent of Survey No.2/3A.

However, so far as Survey No.2/3B was concerned, regarding which the sale deed was executed by father of

the plaintiff in the year 1965, the Trial Court held that there is no evidence on record to show that plaintiff had knowledge of its execution when he executed the receipt Exh.81 in the year 1970 and, therefore, it cannot be said that the said claim in that regard was also barred by limitation. However, it appears from the record that the learned appellate Court Judge has negatived this finding regarding the land of Survey No.2/3B is concerned. On perusal of the entire record, alongwith the document of sale deed of the year 1969 made available for my perusal, it is made clear that, while the plaintiff executed receipt of consideration in the year 1970, the respondent was well aware of the contents of the sale deed of the year 1969 pertaining to the land of Survey No.2/3A and the contents of the said sale deed i.e. of 1969 categorically show that the earlier transaction of the year 1965 pertaining to the land of Survey No. 2/3B was clearly mentioned because both the lands were originally part of Survey No.2/3. If it is so, then it is clear from the record that while executing the receipt Exh.81, the plaintiff had knowledge of not only of execution of the sale deed of 1969 but also that of execution of the sale deed in the year 1965 pertaining to lands Survey No.2/3B. When this aspect is proved and the beyond

reasonable doubt, naturally, in my view, the suit claim is totally barred by law of limitation as the suit is not preferred within the period of three years as contemplated by Art. 59 of the Limitation Act. The learned counsel for the appellant sought to submit that the receipt Exh.81 executed by the plaintiff is not proved on record and, therefore, the dispute cannot be adjudicated on that basis. However, the evidence of defendant No.7 at Exh.80 makes it clear that the plaintiff has executed the receipt Exh.81 receiving the consideration of his share when the receipt was executed by him in his presence. Moreover, the plaintiff has not given any evidence of whatsoever nature in rebuttal to this aspect of evidence led on behalf of defendant No.7. In my view, this part of the evidence is sufficient to hold that Exh.81 is clearly proved on record.

7. The issue of legal necessity for Baban while executing the sale deed of 1965 was also said to be raised at the initial stage. However, it is to be noted that no appeal is preferred by the plaintiff when the Trial Court itself has negatived the contention in that regard and, therefore, that question could not be considered by the lower appellate Court as well as this Court at all.

8. For the reasons recorded above, I am inclined to hold that the findings recorded by the lower appellate Court found to be just, legal and proper on the basis of proper appreciation of available evidence on record vis-a-vis the legal provision. Therefore, it would brook no interference.

8. In the result, the appeal stands dismissed with no order as to costs. Consequently, Civil Application No. 657 of 2004 also stands dismissed with no order as to costs.

(P.V. Kakade, J.)